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Security Council

Fifty-seventh year

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Wednesday, 10 July 2002, 10 a.m.

New York

President:	Sir Jeremy Greenstock	(United Kingdom of Great Britain and Northern Ireland)
Members:	Bulgaria	Mr. Tafrov
	Cameroon	Mr. Tidjani
	China	Mr. Wang Yingfan
	Colombia	Mr. Valdivieso
	France	Mr. Levitte
	Guinea	Mr. Boubacar Diallo
	Ireland	Mr. Ryan
	Mauritius	Mr. Koonjul
	Mexico	Mr. Aguilar Zinser
	Norway	Mr. Kolby
	Russian Federation	Mr. Gatilov
	Singapore	Mr. Mahbubani
	Syrian Arab Republic	Mr. Wehbe
	United States of America	Mr. Negroponte

Agenda

The situation in Bosnia and Herzegovina

Letter dated 3 July 2002 from the Permanent Representative of Canada to the United Nations addressed to the President of the Security Council (S/2002/723).

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-178.

02-46911 (E)

The meeting was called to order at 10.05 a.m.

Statement by the President

The President: I wish to express warm congratulations on behalf of the Council to the African members of the Council and of the United Nations on the historic inauguration yesterday of the African Union. I am sure that the Council will wish to work closely with the new Union on matters of African peace and security.

Adoption of the agenda

The agenda was adopted.

The situation in Bosnia and Herzegovina

Letter dated 3 July 2002 from the Permanent Representative of Canada to the United Nations addressed to the President of the Security Council (S/2002/723)

The President: I should like to inform the Council that I have received letters from the representatives of Bosnia and Herzegovina, Brazil, Canada, Costa Rica, Croatia, Denmark, Fiji, Germany, India, the Islamic Republic of Iran, Jordan, Liechtenstein, Malaysia, Mongolia, New Zealand, Samoa, South Africa, Thailand, Ukraine and Venezuela, in which they request to be invited to participate in the discussion of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the discussion, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Kusljugić (Bosnia and Herzegovina) took a seat at the Council table; Mr. Fonseca (Brazil), Mr. Heinbecker (Canada), Ms. Chassoul (Costa Rica), Ms. Løj (Denmark), Mr. Naidu (Fiji), Mr. Schumacher (Germany), Mr. Nambiar (India), Mr. Fadaifard (Islamic Republic of Iran), Prince Zeid Ra'ad Zeid Al-Hussein (Jordan), Mrs. Fritsche (Liechtenstein), Mr. Hasmy (Malaysia), Mr. Enkhsaikhan (Mongolia), Mr. MacKay (New Zealand), Mr. Slade (Samoa), Mr. Kumalo (South Africa), Mr. Kasemsarn (Thailand), Mr. Kuchinsky (Ukraine) and Ms. Pulido Santana (Venezuela) took the seats reserved for them at the side of the Council Chamber.

The President: In accordance with the understanding reached in the Council's prior consultations, and if I hear no objection, I shall take it that the Security Council agrees to extend an invitation to the Permanent Observer of Switzerland to the United Nations to participate in the discussion, without the right to vote.

There being no objection, it is so decided.

At the invitation of the President, Mr. Staehelin (Switzerland) took the seat reserved for him at the side of the Council Chamber.

The President: The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in response to a request contained in a letter dated 3 July 2002 from the representative of Canada, which was issued as document S/2002/723.

As there is no list of speakers from among Council members, I invite those members who wish to take the floor to so indicate to the Secretariat as from now.

With the agreement of the members of the Security Council, I intend to give the floor to the speakers inscribed on my list by alternating between Council members and non-members of the Council. In the first instance I shall give the floor to the first four non-members of the Council inscribed on the list.

The first speaker is the representative of Canada. I invite him to take a seat at the Council table and to make his statement.

Mr. Heinbecker (Canada): I am grateful to Council members for agreeing to an open debate on an issue of profound interest not only to the membership at large but also to the Organization itself. My Government is deeply worried by the discussions that have been taking place in the Security Council concerning sweeping exemptions for peacekeepers from prosecution from the most serious crimes known to humanity. Issues of such potentially far-reaching consequences need to be debated openly, not exclusively in closed-door consultations, if their

conclusions are to carry the conviction of the membership as a whole.

Today I would like to make three basic points, on which I will elaborate. First, the issue at stake is larger than the International Criminal Court (ICC); fundamental principles of international law are in question. Secondly, the Council has not been empowered to rewrite treaties; the draft resolutions that are circulating contain elements that exceed the Council's mandate, and passage of them would undermine the credibility of the Council. Thirdly, the issue is not of a choice between peacekeeping and the ICC; options exist to resolve this issue that would provide for the continuation of United Nations peacekeeping and that would preserve the integrity of the international legal system and of the Rome Statute. We respectfully submit that those options should be used.

(*spoke in French*)

The United States has clearly voiced its concerns about the International Criminal Court. We respectfully disagree with the United States on those concerns because of the numerous safeguards written into the Rome Statute, including through extensive United States input into devising checks and balances, precisely in order to preclude politically motivated prosecutions. None of the States parties wants a political court.

The crimes were meticulously defined in a manner acceptable to United States negotiators and to all other States, with thresholds that exclude the random and isolated acts that a peacekeeper might conceivably commit. For example, article 8 requires the Court to focus on war crimes "committed as part of a plan or policy or as part of a large-scale commission of such crimes" (*A/CONF.183/9, article 8, para. 1*). In addition, the Court is obliged to defer to genuine national legal proceedings.

No one in this Chamber believes that the democratically elected Government of the United States and its mature legal system would turn a blind eye to allegations of such grievous crimes. And when the United States discharged its obligations to investigate alleged perpetrators — and, if necessary, to prosecute them, as it would — intervention by the International Criminal Court would be precluded.

Nonetheless, we respect the United States decision not to ratify the Rome Statute. No one could — or would want to try — to force the United States or any other United Nations Member to become a party to the International Criminal Court. Acceding to a treaty is a sovereign decision. The United States Government clearly has no obligations to the Court. That is not the issue.

(*spoke in English*)

At stake today are entirely different issues that raise questions about whether all people are equal and accountable before the law; whether everyone in the territory of a sovereign State is subject to that State's laws, including international laws binding on that State; and whether States may collectively exercise their sovereignty to prosecute perpetrators of grievous crimes. Those principles were affirmed at Nuremberg and have been affirmed since.

As a country with extensive experience in peacekeeping, having participated in almost all of the United Nations peacekeeping missions and having lost 106 servicemen and servicewomen in peacekeeping missions — more than any other country — Canada has no doubt that peacekeeping and peace-building are critical to the maintenance of international peace and security.

The current debate has been mischaracterized as a choice between peacekeeping and the International Criminal Court. In fact, the stakes are actually different and even higher. Fundamental principles of international law and the place of those principles in the conduct of global affairs are in question.

First, in the absence of a threat to international peace and security, the Council's passing a Chapter VII draft resolution on the ICC of the kind currently circulating would in our view be *ultra vires*.

Secondly, acting beyond its mandate would undermine the standing and credibility of the Council in the eyes of the membership.

Thirdly, the proposed draft resolutions currently circulating would set a negative precedent under which the Security Council could change the negotiated terms of any treaty it wished — for example, the nuclear Non-Proliferation Treaty — through a Security Council resolution. The proposed draft resolution would thereby undermine the treaty-making process.

Fourthly, the proposals now circulating would have the Council, Lewis-Carroll-like, stand article 16 of the Rome Statute on its head. The negotiating history makes clear that recourse to article 16 is on a case-by-case basis only, where a particular situation — for example the dynamic of a peace negotiation — warrants a 12-month deferral. The Council should not purport to alter that fundamental provision. Those States that have pledged to uphold the integrity of the Statute — especially the six States parties in the Council – have a special responsibility in that regard.

Fifthly, passage of the proposed draft resolutions currently circulating would send an unacceptable message that some people — peacekeepers — are above the law. It would thus entrench an unacceptable double standard in international law.

Sixthly, it is worth recalling that the ICC may only exercise jurisdiction where impunity would otherwise result.

Let me emphasize what the effect of the draft resolution would be. Where sending States declined to prosecute peacekeepers alleged to have perpetrated crimes, the proposals now circulating would assure the alleged perpetrators of impunity from prosecution for genocide, crimes against humanity and war crimes.

For those reasons, adoption of the draft resolutions currently circulating could place Canada — and indeed other Members of the Organization — in the unprecedented position of having to examine the legality of a Security Council resolution.

The Council does not have to pursue this fraught course of action. Solutions exist outside the ambit of Council responsibility. The United States, as do all countries, has several options to protect its interests without vetoing United Nations peacekeeping missions, which are so vital to millions of people. In considering these options, it is perhaps helpful to recall the point made by the Secretary-General, that for the missions in the Balkans, the International Criminal Tribunal for the Former Yugoslavia already has primacy over the International Criminal Court. Also, no mandate renewal beyond the Balkans is foreseen for a United Nations mission operating on the territory of a State party in which the United States has personnel stationed.

The first option is therefore to do nothing now because the ICC does not have jurisdiction over any United States personnel on United Nations peacekeeping missions.

Secondly, the absence of ICC jurisdiction notwithstanding, the United States could simply withdraw its forces from current missions. Their doing so would be regrettable and would not be without consequence, but adjustments could be made.

Thirdly, the United States could decline to participate in future United Nations missions.

Fourthly, for all United Nations or coalition missions, the United States could negotiate appropriate bilateral agreements with receiving States. Doing so would be consistent with article 98 of the Rome Statute.

Recently, I sent a letter to all members of the Security Council urging them not to endorse a blanket immunity for these most serious of crimes. I respectfully repeat that plea again today.

The proposed draft resolutions circulating avoid the word "immunity" but in fact have precisely the same effect as the proposal that the Security Council would not entertain on 30 June. We appeal to members of the Security Council to ensure that essential principles of international law and the spirit and letter of the Rome Statute not be compromised; that a solution to this problem be found that preserves the indispensable instrument of United Nations peacekeeping; and that the unique authority of the Council not be undermined by over-reaching.

We have just emerged from a century that witnessed the evils of Hitler, Stalin, Pol Pot and Idi Amin, and the Holocaust, the Rwandan genocide and the ethnic cleansing in the former Yugoslavia. I believe that we have all learned the fundamental lesson of that bloodiest of centuries: impunity from prosecution for grievous crimes must end.

We remain convinced that the concerns expressed by the United States can be addressed in ways that do not compromise the Court or international law or place the Security Council in the untenable position of permitting the possibility of impunity for genocide, crimes against humanity and war crimes.

The President: The next speaker inscribed on my list is the representative of New Zealand. I invite him to take a seat at the Council table and to make his statement.

Mr. MacKay (New Zealand): Let me express our appreciation to you, Mr. President, and to the other members of the Council for acceding to the request of Member States, including ourselves, for an open meeting on the item on Bosnia and Herzegovina. The broader issue in this item is of course the linkage being drawn with the jurisdiction of the International Criminal Court (ICC), which has just been addressed by the representative of Canada. This issue clearly has implications for all Members of the United Nations, not merely those party to the Rome Statute of the International Criminal Court. It has implications for United Nations peacekeeping, for fundamental issues of international law and the international treaty-making process, and for the role of the Security Council itself. In our view, no decision should be taken by the Council on such issues without full consideration and reflection of the views of all Member States that wish to express them.

We note at the outset the comments of the Secretary-General in his letter transmitted to the Council and his advice that the issue before the Council could only arise out of a most unlikely series of events, namely a situation where service personnel on peacekeeping duties were alleged to have committed crimes of genocide, war crimes or crimes against humanity and where the authorities of their own State were unwilling or unable to properly investigate those allegations. As I say, and as the Secretary-General has said, that is an improbable situation. But the mere possibility of the existence of such a situation of fact could not in any event be said to constitute a threat to international peace and security such as would require a Council decision upon it. I would refer, in that respect, to the comments already made by the Permanent Representative of Canada on the same point.

Nor do we see this question as a conflict between the International Criminal Court and peacekeeping. To our mind, both institutions are aimed at a common goal: at securing and maintaining international peace, and upholding the principles on which this Organization stands. Neither should be held hostage to the other, and indeed no State should be required to choose between them as members of the Council are being asked to do in the current situation, with the stark options that have been presented to Council members.

New Zealand, as a State which is both party to the Rome Statute and a troop-contributing country, sees no justification or need for exemption of peacekeepers from the jurisdiction of the Court. We only see downsides to such a proposal. To provide such an immunity in any fashion would seem to enshrine an unconscionable double standard. It would appear to place peacekeepers above the law and indeed places the moral authority of peacekeepers and the indispensable institution of United Nations peacekeeping in serious jeopardy.

However, to attempt to provide an immunity by the mechanisms currently under consideration by the Council, in our view, raises even greater difficulties. Attempts to invoke the procedure laid down in article 16 of the Rome Statute in a generic resolution, not in response to a particular fact situation, and on an ongoing basis, are inconsistent with both the terms and purpose of that article. While article 16 undoubtedly allows the Security Council to stop investigations and prosecutions for a 12-month period, its wording as well as its negotiating history — and I can say that I was one of those who was involved in negotiating this among other provisions of the Statute — make clear that it was intended to be used on a case-by-case basis by reference to particular situations, so as to enable the Security Council to advance the interests of peace where there might be a temporary conflict between the resolution of armed conflict, on the one hand, and the prosecution of offences, on the other. Here, no conflict between the two arises. The article might also be used as a protection of last resort against frivolous or political prosecutions. Again, that does not arise here. But it certainly provides no basis for a blanket immunity to be imposed in advance. Again, I would reiterate, as one who participated in the negotiations on article 16, that this was a long and drawn-out compromise. There were concerns expressed by members of the Security Council, which were taken into account. There were concerns by non-members of the Security Council, who wished to ensure that a balance be retained; and this balance was the outcome. It would be most unfortunate, to say the least, if article 16 were to be misused in this particular way.

To purport to provide a blanket immunity in advance in this way would in fact amount to an attempt to amend the Rome Statute without the approval of its States parties. It would represent an attempt by the Council to change the negotiated terms of a treaty in a

way unrecognized in international law or in international treaty-making processes. Member States would have to question the legitimacy and legality of this exercise of the role and responsibility entrusted to the Council were that to occur.

New Zealand recognizes that the United States has strong concerns about the International Criminal Court. We do not share those concerns, but we do respect that they exist. Similarly, though, we would ask that the Council afford the same respect to those States which have chosen to bind themselves by the obligations of the Statute. We therefore ask that no action be taken by this body which would purport to undermine the terms or integrity of the Rome Statute or its implementation by its States parties.

As our colleague the Permanent Representative of Canada has so eloquently outlined, there are indeed adequate protections already within the Rome Statute that address the concerns raised by the United States. In particular, we would note that the Rome Statute was very deliberately built on the principle that national courts have primary responsibility for the prosecution of crimes by their nationals. The ICC is very much a court of last resort. It may conduct a prosecution only if impunity would otherwise result. There are also safeguards built in — and, again, very deliberately built in — to prevent decisions on prosecutions being based on political rather than legal grounds.

If such protections are not considered to be enough, however, it remains open to individual States to take additional measures to protect their interests. They could, for example, decline to participate in United Nations missions — although, as our colleague from Canada has said, that would undoubtedly be a most regrettable result that certainly none of us would wish to see — or they could negotiate appropriate bilateral agreements with host States. In our view, those are the options that should be considered first.

There are also various options in front of the Council itself, short of the enactment of a blanket immunity for peacekeepers. Consistent with the mandate of Chapter VII, the Council should act to reach solutions in specific cases, taking account of the full range of facts in each situation. Such facts will inevitably vary from case to case and from mission to mission. But we note, for example, the Secretary-General's suggestion that a pragmatic solution already exists in respect of the missions in Bosnia and Herzegovina and Prevlaka should the Council wish to pursue it.

We urge the Council and each of its members not to proceed with a blanket-immunity approach and to consider the pragmatic solutions that have already been identified, without sacrificing the principles for which the International Criminal Court stands: to put an end to impunity and to ensure that the most serious crimes of concern to the international community not go unpunished.

The President: The next speaker is the representative of South Africa, I invite him to take a seat at the Council table and to make his statement.

Mr. Kumalo (South Africa): On behalf of my delegation, I congratulate you, Sir, on your assumption of the presidency of the Council for July 2002. In particular, I thank you for your warm words welcoming the creation of the African Union. As custodians of the African Union for the upcoming year we hope to work very closely with you. As members know, the African Union was formed late yesterday, and among its first items of business was to discuss the matter before the Council today. We are not in a position to make a submission right now but we will present a submission on behalf of the African Union in the coming days.

We come before the Council to register our concern at a critical time when the Security Council's credibility is seriously threatened. The Security Council, entrusted with the maintenance of international peace and security, is now being asked to question the authority of an international body, the International Criminal Court. We believe that the Council's mandate leaves no room either to reinterpret or even to amend treaties that have been negotiated and agreed by the rest of the United Nations membership. An action by one permanent member has cast a shadow over the operation of the International Criminal Court and indeed over the application of international law in general. In that regard, South Africa supports the concerns voiced by the Secretary-General in his letter dated 3 July 2002 transmitted to the President of the Council, about the implications of such an action.

For several years, the United Nations has assisted the people of Bosnia and Herzegovina to rebuild their war-shattered Government institutions and work towards the establishment of effective and credible police and border control services. Moreover, the United Nations presence in the Balkans has, until now,

sent a powerful message that the international community is firmly committed to assisting the peoples of South-East Europe to fully recover from the devastating effects of war. These achievements are now threatened by one permanent member of the Security Council in its misunderstanding and its unfounded fears concerning the jurisdiction of the International Criminal Court which came into force just 10 days ago. This action by one member of this Council affects peace and stability in the entire Balkans and has implications for all United Nations peacekeeping operations throughout the world.

As the Council is aware, most conflicts are currently in Africa, and if this draft resolution were passed, peace would be set back in our continent for a long time. The fact that any permanent member can unilaterally decide to exercise its veto privilege to defeat the efforts of the other 14 members to extend the mandate of an agreed United Nations peacekeeping mission holds disturbing implications for the other 174 Members of the United Nations and for the entire world in general. It is indeed worrisome that there is a possibility other United Nations missions may suffer the same fate. That fear becomes real when we consider that in the month of July 2002 alone, the mandates of the United Nations missions in Western Sahara, Lebanon, Georgia and Prevlaka are due for renewal.

The creation of the International Criminal Court is evidence of an emerging norm in international law in favour of ensuring that those accused of the most serious crimes are either prosecuted by competent national authorities or handed over for prosecution by a duly instituted international court. We hope the Security Council will actively promote this emerging norm in international law.

We urge the Security Council to stand firm and protect the peace mission in the Balkans, while reinforcing — certainly not jeopardizing — the International Criminal Court and the norms of international law it has established. The Security Council cannot fail the people of Bosnia and Herzegovina, because if it did so, it would have failed people everywhere.

The President: The next speaker is the representative of Denmark. I invite her to take a seat at the Council table and to make her statement.

Ms. Løj (Denmark): I have the honour to speak on behalf of the European Union (EU). The countries of Central and Eastern Europe associated with the European Union — Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia — and the associated countries Cyprus and Malta, as well as the European Free Trade Association country member of the European Economic Area Iceland, align themselves with this statement.

I thank you, Mr. President, and all the other members of the Security Council for giving us the opportunity to express ourselves on this important matter. The recent enactment of the Statute of the International Criminal Court (ICC) is a major leap forward in the progressive development of international law. The Court is not only a judicial institution designed to investigate and prosecute acts of genocide, crimes against humanity and war crimes. It is also a strong political statement in the fight against impunity for the most serious crimes of concern to the entire international community. It is an essential contribution to the preservation of peace and the strengthening of international security.

From the outset, the EU has been a strong supporter of the ICC. A declared objective of the EU is to support the early establishment and effective functioning of the Court and to advance universal support for the Court by promoting the widest possible participation to the Statute. In our Common Position adopted by the EU Council of Ministers, we have pledged to share our experiences on implementing the Statute; pledged to provide technical and financial assistance to the best of our ability; and pledged to participate actively in the preparatory work in order to ensure an efficient and dynamic Court.

It is understandable that the United States is seeking protection from politically motivated accusations. The EU, however, believes that these concerns have been met and sufficient safeguards against politically motivated accusations have been built into the Statute. Furthermore, the Statute's principle of complementarity places primary responsibility for investigation and prosecution with domestic jurisdictions. The International Criminal Court may intervene only when a State is unwilling or unable genuinely to carry out an investigation or a prosecution. The European Union believes that in such

cases the Court will prove to be an effective, competent and fair legal institution.

Finally, the ICC does not impinge on the rights of third States; it is based on the territorial and national jurisdiction of the States parties, and such jurisdiction is asserted by all States.

Various solutions to the concerns expressed have been offered. One of them invokes the procedure laid down in article 16 of the Rome Statute. That article states that

> "No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect". (*A/CONF.183/9*)

Article 16 should be invoked only in conformity with the Statute.

Furthermore, the European Union has carefully examined the letter of the Secretary-General conveyed to the United States Secretary of State and circulated to members of the Security Council. We especially noted the following passage:

> "I think that I can state confidently that in the history of the United Nations, and certainly during the period that I have worked for the Organization, no peacekeeper or any other mission personnel have been anywhere near the kind of crimes that fall under the jurisdiction of the ICC. The issue that the United States is raising in the Council is therefore highly improbable with respect to United Nations peacekeeping operations. At the same time, the whole system of United Nations peacekeeping operations is being put at risk."

We fully agree with the Secretary-General's statement, and we welcome the fact that the Security Council has agreed on a technical extension of the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) until 15 July, thereby allowing time to reach a solution on this extremely important matter.

Let me stress that the European Union attaches great importance to the continued and major contribution of the United States to peacekeeping missions around the world. The United States plays an indispensable role, not least in the Balkans. We are well aware that the United States and the European Union share the view that the people of Bosnia do not deserve to pay the price in this unfortunate situation.

At the same time, we commend individual peacekeepers for the invaluable contributions that they have made and continue to make in dangerous and difficult situations. Our adherence to the Rome Statute in no way diminishes our commitment and responsibility to them and to their missions. It is an expression not of distrust but, rather, of complete trust. It is therefore with particular gratification that we note the assurances by United States representatives that the United States commitment to the people of Bosnia and to peacekeeping missions remains undiminished.

UNMIBH, together with the Stabilization Force, has contributed significantly to the overall progress that has been achieved in the region since the end of the war in 1995. Bosnia is now a more stable and democratic country, with the prospect of integration into the European structures.

But the risk of a setback is still real. Thus, the Secretary-General stated, in his most recent report on UNMIBH, that

> "the systemic weakness of the rule of law in Bosnia and Herzegovina, and continued obstruction, interference and illegal activities of entrenched political extremists and criminal organizations will require continued international attention." (*S/2002/618, para. 36*)

An abrupt end to the United Nations International Police Task Force in Bosnia would create a vacuum that could have a negative impact on the general elections in October. Those elections will be the first since the war to be organized by the Bosnian authorities themselves. It is the responsibility of the international community to continue to support those endeavours.

It has been the common wish of the Security Council and the European Union to secure an orderly transition between the United Nations International Police Task Force and the European Union Police Mission, which plans to take over on 1 January 2003. Uninterrupted support of police reform in Bosnia is crucial to the continued implementation of the Dayton Peace Accord. The European Union has indicated that,

if necessary, it would take measures in order to avoid a gap in the international police presence in Bosnia. It is evident that an abrupt end to the United Nations International Police Task Force would make those efforts difficult.

Finally, let me express the profound concern of the European Union about the potential consequences for United Nations peacekeeping in general. Peacekeeping is an indispensable element in United Nations efforts to maintain and restore international peace and security. Over the years, United Nations peacekeeping has proved its worth in many conflicts around the world. In recent years, great progress has been achieved towards the further improvement of the United Nations capacity for peacekeeping.

We strongly urge all members of the Security Council to do their utmost to achieve a solution that does not harm the integrity of the Rome Statute of the International Criminal Court and which ensures the uninterrupted continuation of United Nations peacekeeping operations.

The President: I shall now give the floor to three members of the Security Council.

Mr. Negroponte (United States of America): A single important issue is usually enough to fill this historic Chamber. Today, however, we are considering two issues: the relationship between the Security Council and the International Criminal Court (ICC); and the future of peacekeeping in Bosnia.

Ever since we chaired the committee that drafted the Universal Declaration of Human Rights more than 50 years ago, the United States has consistently led the effort to strengthen international justice and accountability. In the past decade, the United States played a key role in the establishment of the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court in Sierra Leone.

Slobodan Milosevic is on trial for his crimes because a coalition of countries, led by the United States, not only gave political support to the work of the International Criminal Tribunal for the former Yugoslavia but also supplemented that support in practical ways, in cooperation with the new leadership in Belgrade.

Foday Sankoh and his followers will be brought to justice for their crimes in Sierra Leone because the United States sponsored a Security Council resolution requesting the establishment of a Special Court, of which we are a key supporter and the largest financial contributor.

We continue to hope that the United Nations and the Government of Cambodia can agree on a reliable, independent and impartial structure for trial of Khmer Rouge leaders. And we support the request of the International Criminal Tribunal for Rwanda for additional judges in order to speed the important work of the Tribunal. We recently announced a Rewards for Justice programme on Central Africa, with the goal of bringing to Arusha the authors of the Rwandan genocide who are still at large.

As our record demonstrates, the United States believes in justice and the rule of law, and in accountability for war crimes, crimes against humanity and genocide. We accept the responsibility to investigate and prosecute our own citizens for such offences, should they occur. We do not shirk from public and private protest — here in New York, in the Human Rights Commission in Geneva, or wherever our voice can be heard — whenever and wherever such outrages are committed.

Our commitment to peace and security in Bosnia and around the world is also not in question. The United States contributes almost 10,000 of its citizens to United Nations-established or United Nations-authorized peacekeeping operations, in addition to the thousands of troops we deploy in the Republic of Korea with United Nations authorization.

In Bosnia, the United States has more than 2,000 troops and nearly 50 civilian police. The senior United Nations official is an American citizen, on loan from my Government. With such a record, it is clear that our veto of the draft resolution on the United Nations Mission in Bosnia and Herzegovina (UNMIBH) did not reflect rejection of peacekeeping in Bosnia. But it did reflect our frustration at our inability to convince our colleagues on the Security Council to take seriously our concerns about the legal exposure of our peacekeepers under the Rome Statute.

Peacekeeping is one of the hardest jobs in the world. While we fully expect our peacekeepers to act in accordance with established mandates and in a lawful manner, peacekeepers can and do find

themselves in difficult, ambiguous situations. Peacekeepers from States that are not parties to the Rome Statute should not face, in addition to the dangers and hardship of deployment, additional, unnecessary legal jeopardy. If we want troop contributors to offer qualified military units to peacekeeping operations, it is in the interest of all United Nations Member States to ensure that they are not exposed to unnecessary additional risks. This principle has been acknowledged over decades in United Nations status-of-mission agreements and by parallel agreements, such as in the Dayton Accords and the Military Technical Agreement for the International Security Assistance Force in Afghanistan.

We should be very clear: the legal position of peacekeepers and of the States contributing them has been an issue throughout the history of peacekeeping and has been an important consideration for the Governments that must decide whether to contribute their citizens to peacekeeping operations or to help out in unexpected crisis or emergency situations, as the United States is frequently asked to do.

The Secretary-General noted that peacekeepers have not been prosecuted for such crimes in the past. We agree, and this is an additional reason why we do not believe that the ability of the International Criminal Court to pursue peacekeepers is central to its functions.

Does anyone really believe that the ICC should be aimed at the citizen soldiers of contributing States, deployed voluntarily at the request and with the authorization of the international community, solely for the purpose of maintaining peace and security?

Does anyone really believe that deferral of ICC action in the unlikely event of an accusation against peacekeepers, which would certainly be examined by national authorities, would undermine the Court's ability to go after the gross violators at whom it truly is aimed?

Some have suggested that the United States is taking too alarmist a view of the dangers that the ICC poses to troop contributors. I would argue that supporters of the ICC take too alarmist a view of the pragmatic solution that the United States is proposing.

Deferral of investigations and prosecutions — and I wish to stress this point — in keeping with the Rome Statute cannot undermine the role the ICC plays on the world stage. Failure to address concerns about placing peacekeepers in legal jeopardy before the ICC, however, can impede the provision of peacekeepers to the United Nations. It certainly will affect our ability to contribute peacekeepers.

Although we do not recognize the jurisdiction of the ICC and do not intend to become party to the Rome Statute, we do not question the good intentions of its architects. We respect the obligations of those States that have ratified the Rome Statute. Indeed, in the proposals we have put forward before the Council, we have sought to work within the provisions of that Statute. We hope that other States, in turn, will respect our concerns about peacekeepers.

Our latest proposal uses article 16 of the Rome Statute — as we were urged to do by other Council members — to address our concerns about the implications of the Rome Statute for nations that are not parties to it, but which want to continue to contribute peacekeepers to United Nations missions. We respectfully disagree with analyses that say that our approach is inconsistent with the Rome Statute. Article 16 contemplates that the Security Council may make a renewable request to the ICC not to commence or proceed with investigations or prosecutions for a 12-month period on the basis of a Chapter VII resolution. We believe that it is consistent both with the terms of article 16 and with the primary responsibility of the Security Council for maintaining international peace and security for the Council to adopt such a resolution with regard to operations it authorizes or establishes, and for the Council to decide to renew such requests.

We have offered a solution to this problem that is consistent with the obligations of all United Nations Member States, including those that are parties to the Rome Statute; that provides the protections we seek; and that strengthens the capacity of the United Nations to carry out peace operations. We urge other delegations to consider this balanced solution and to work with us on a practical way forward.

Mr. Levitte (France) (*spoke in French*): France fully supports the statement made on behalf of the European Union by the Ambassador of Denmark.

As my country addressed the Council on this issue on 30 June, today I wish simply to speak in greater depth on a few points relating to the Rome Statute and to peace operations.

First, a word about our attitude towards this issue. France respects, though it does not share, the position of the United States regarding the International Criminal Court (ICC). France hopes that the many hours of discussion in the Council and among capitals will make it possible better to understand this subject and thus achieve greater convergence on possible solutions.

France very much hopes that by the end of the week the Council will have been able to find a solution that addresses the concerns of the United States while fully respecting the Statute of the International Criminal Court.

I now come to the Rome Statute. As it stands, it offers the United States far more substantial safeguards than does the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), which, nevertheless, has never elicited the least concern in Washington. Allow me to demonstrate this point with four specific examples.

First, the ICTY Statute permits the Tribunal to compel national courts to drop a case and cede it to the ICTY — this is called the principle of primacy — whereas the Rome Statute provides that the Court can prosecute persons only if competent national courts do not prosecute; this is called the principle of complementarity.

Secondly, indictments prepared by the ICTY Prosecutor are confirmed by a single judge, whereas the International Criminal Court (ICC) Prosecutor can undertake a prosecution only with the authorization of a pretrial chamber composed of three judges.

Thirdly, article 98 of the Rome Statute enables any State requested to cooperate with the Court to invoke a bilateral agreement according immunities to the nationals of a third State in order not to comply with the Court's request. That safeguard does not exist in the ICTY statute.

Fourthly and finally, the Security Council, on the basis of article 16 of the Rome Statute, may decide to suspend an action initiated by the Court for a renewable period of a year, which is not provided in the ICTY statute.

Those four differences demonstrate that the Rome Statute, as it stands, responds far better to the concerns of the United States than does the ICTY statute. I reiterate that, throughout the six years of its implementation, the ICTY statute has never elicited the least criticism on the part of Washington.

I would add that the criteria and the modalities provided in the Rome Statute for the election of International Criminal Court judges is scarcely different from those provided for the election of judges to the ICTY. Therefore, there is no reason to fear that the work of the Court's judges will be any less irreproachable than that accomplished, to the satisfaction of all, by the ICTY judges.

The International Criminal Court marks major progress in building an international order based on law. It targets criminal leaders who have victimized their people, such as those who have held sway in Cambodia or in Sierra Leone, in Rwanda or in Yugoslavia. As Kofi Annan wrote in his 3 July letter,

> "... in the history of the United Nations ... no peacekeeper or any other mission personnel have been anywhere near the kind of crimes that fall under the jurisdiction of the ICC."

The United States, nonetheless, wants to be sure that none of its nationals serving abroad will be brought before this Court. The principle of complementarity, and the combined recourse to articles 16 and 98 of the Rome Statute, allow our United States partners a near-guarantee in that regard. France has made a specific proposal regarding article 16 and is ready to discuss that within the limits authorized by law — I repeat, within the limits authorized by law. However, it cannot accept modification, by means of a Security Council resolution, of a provision of the treaty. Furthermore, even if the United States manages to persuade a majority of the Council to take that course of action, one may question the effect of such a resolution on the decisions to be taken by the Court. It is certainly not in the Council's interest to see any conflict of norms arise.

Finally, I should like to say a word about United Nations peace operations. No one contests the major responsibilities shouldered today by the United States, including military ones. However, there are many crises in which Washington does not want to be directly involved. There is only one way to help resolve those crises: the Blue Helmets. If Washington, by this weekend, confirms its veto with respect to the United Nations Mission in Bosnia and Herzegovina (UNMIBH) and then proceeds to veto every mission extension that arises, who will take over the

responsibility for those forces? Who will complete the restoration of peace in Sierra Leone, begun so successfully by the United Nations Mission in Sierra Leone, supported by the United Kingdom? Who will have the responsibility of completing the remarkable work accomplished by the United Nations in East Timor? Who, at the end of July, will replace in southern Lebanon the United Nations Interim Force in Lebanon, created 24 years ago at the initiative of the United States?

Sixteen forces of various sizes are deployed today throughout the world. They are carrying out difficult missions. They deserve the full support of the international community. We must recognize that they are irreplaceable. If ever proof were needed, it would suffice to ask — as I have just done — who would agree to replace them. Let us not take them hostage. Let us think of all the peoples for whom they represent the only hope of peace and progress.

With regard to UNMIBH, if we do not reach an appropriate agreement on the International Criminal Court by the weekend, we shall have to decide to extend its mandate one last time, until 31 December, as provided in the draft resolution submitted by Bulgaria. In order to respond to the concern of the United States, we could — as suggested by the Secretary-General — add to that text a paragraph stressing the primacy of the ICTY's competence over that of the International Criminal Court.

If that solution is not accepted by the United States, France will fully support the draft resolution of the United Kingdom allowing for the orderly withdrawal of UNMIBH and its replacement, on 1 November, by the European Union Police Mission. The Council has the duty to think first of the people of Bosnia, who are slowly emerging from a terrible tragedy and who deserve the solidarity of the international community.

Mr. Tafrov (Bulgaria) (*spoke in French*): I too should like to congratulate the States of Africa on the foundation of the African Union. Bulgaria wishes the African Union every success. I should also like to thank the Permanent Representative of Canada for having taken the initiative of requesting this open debate on an issue of great timeliness.

As a country associated with the European Union, Bulgaria fully endorses the statement made earlier on behalf of the Union by the representative of Denmark. In its capacity not only as a signatory of the Rome Statute but also as one of the first 60 countries to have ratified it, Bulgaria has worked and continues to work actively to bring about the consolidation of the International Criminal Court (ICC) as a court with universal jurisdiction to combat crimes against humanity, genocide and war crimes, and against impunity for the most grievous crimes. We associate ourselves with all those who are working to strengthen the principles of international law, the Charter of the United Nations and the Rome Statute.

Bulgaria is the sole representative in the Security Council not only of the Eastern European regional group, but also of the Balkan countries. In that capacity, it is of vital importance to my country to preserve the still rather fragile stability in Bosnia and Herzegovina. In order to contribute to promoting this stability, and while recognizing the essential role played by the United Nations and the United Nations Mission in Bosnia and Herzegovina (UNMIBH) in that regard, as coordinator of the contact drafting group for the former Yugoslavia last month Bulgaria introduced in the Security Council a draft resolution on Bosnia and Herzegovina. Along with other countries — and this is something that relates not only to Bosnia and Herzegovina but to the whole region — our goal is to develop a clear vision for the future of Bosnia and Herzegovina. We think that this is a responsibility of the entire international community and of the Security Council. The United Nations and the Security Council have undertaken serious commitments to assist that country to move towards democracy. As the essential political body of our Organization, the Council has the primary responsibility for the maintenance of international peace and security. The Council must remain fully engaged in Bosnia and Herzegovina until the process that we began with so much effort becomes irreversible.

The very animated discussions that have taken place among members of the Security Council in the last few weeks have been prompted by the entry into force of the Rome Statute, which gave rise to misgivings among some countries — including the United States — that the Statute might concern their citizens working in United Nations peacekeeping operations on the territories of countries parties to the Statute. Those discussions have tested the Council's ability to carry out its mandate under Chapter VII of the Charter.

Given the extremely complex situation that has arisen, my country has taken an important decision to work tirelessly for the unity of the Council, keeping in mind the very serious political consequences of this decision not only for Bosnia and Herzegovina but also for the other peacekeeping operations. We remain convinced that the members of the Council must act in a spirit of compromise and mutual understanding, and that they must actively work to find a solution that is acceptable to all.

I would like to reaffirm here my country's very clear position. Peacekeeping operations are an essential instrument of the United Nations and the Security Council in the implementation of the mandates stemming from Chapter VII of the Charter. Accordingly, the search for compromise should not be linked with the weakening of important international treaties such as the Rome Statute. We are convinced that there is a possible solution to the current situation, and that that solution can be found through compromise and flexibility on all sides. Bulgaria will strive to arrive at a formulation that will accommodate the interests of all the parties concerned in this discussion. We stand ready to discuss each and every proposal that provides a reasonable response to the current problem. United under the Charter of the United Nations, we are duty-bound to find a solution that both enshrines and preserves the principles of international law, to which we all subscribe, and takes into account the legitimate interests of the various countries involved.

The President: I shall now call on the next four non-members of the Council. The next speaker is the representative of India. I invite him to take a seat at the Council table and to make his statement.

Mr. Nambiar (India): Please accept my delegation's congratulations, Mr. President, on your assumption of the presidency of the Security Council for the month of July.

While the agenda item under consideration today is the situation in Bosnia and Herzegovina, the issue that has so far prevented the Council from adopting a substantive resolution on that item is the immunity of peacekeepers from the jurisdiction of third parties, including international criminal tribunals, with respect to possible allegations of criminal offences committed during peacekeeping operations.

We appreciate the opportunity given to non-members of the Council to share their perspective on the ongoing debate in the Council's informal consultations on this important and, indeed, divisive issue. We shall do so in a constructive spirit and with a sense of responsibility as a major contributor to United Nations peacekeeping operations.

United Nations peacekeepers, by definition, are deployed to serve the cause of international peace, often in lands unknown to them, far removed from their homes or national interests. They operate under strict mandates and tight rules of engagement established by the United Nations. They are drawn from a number of countries and are supervised from United Nations Headquarters, in addition to the political leadership of the mission concerned. Moreover, they are accountable to their own Governments for their actions in the field. It is therefore highly unlikely that United Nations peacekeepers would commit criminal offences of an egregious nature or gross, premeditated and systemic crimes.

As of now, United Nations peacekeepers are provided immunity under status of forces agreements. Such immunity is provided for sound practical reasons that have stood the test of time. Exposing them now to allegations and possible harassment through charges of crimes committed during the exercise of their functions as peacekeepers, apart from laying them open to the possibility of motivated charges, is likely to put these forces on the defensive, constrict their capacity to take firm action when required and, eventually, adversely affect the readiness of potential troop contributors to provide troops to the United Nations for peacekeeping functions.

Over the past five decades, United Nations peacekeepers have contributed immensely to the preservation of peace in different parts of the world. Their record has been a matter of pride for all of us. This is particularly true for countries such as India that have contributed peacekeepers in significant numbers. To our knowledge, there has been no instance of a United Nations peacekeeping force having been accused of committing an egregious crime. We are of the view that, in practical terms, the possibility of United Nations peacekeepers being involved in crimes that would bring them within the purview of international tribunals such as the International Criminal Court is extremely remote. Therefore, in taking a decision on this matter, the Council will do

well to bear in mind the actual historical experience and to ponder whether there is need at all to seek a cure for an ailment that does not exist.

As a measure of abundant caution, the Council should ensure that troops for United Nations peacekeeping missions are drawn from countries that uphold healthy democratic traditions and where respect for the rule of law, constitutional order, civilian control over armed forces and basic transparency in the functioning of institutions are observed. Obviously, troops that usurp power at home and undermine or emasculate constitutional structures are unlikely to promote or reinforce the rule of law elsewhere.

As representatives of a democracy — the largest in the world — with an independent judiciary whose contribution to the jurisprudence of the rights of the individual is likely to have few equals, we find it difficult to accept an outside authority purporting to sit in judgement upon the actions of our troops. Quite apart from the exemplary discipline and commitment to the cause of peace displayed by them, we see them as answerable for their behaviour to authorities within the established hierarchy of command and to our own established institutions, not to institutions whose jurisdiction we do not recognize.

Notwithstanding that, we understand the dilemma of the countries that have signed the Statute of the International Criminal Court (ICC) and have taken upon themselves certain specific obligations thereunder. We recognize that they are free to submit their nationals, including their troops, to the jurisdiction of the ICC as a national decision.

The Council's decision on this issue will have broad ramifications for United Nations peacekeeping operations as well as for troop-contributing countries. India is not a signatory to the ICC Statute for reasons that are well known. We would urge the Council to give careful consideration to the views of major troop-contributing countries that are not party to the ICC before taking a decision. The Council should not allow United Nations peacekeeping operations, an important tool for the maintenance of international peace and security in its hands, to be undermined by its own decisions.

The President: The next speaker inscribed on my list is the representative of Costa Rica. I invite her to take a seat at the Council table and to make her statement.

Mrs. Chassoul (Costa Rica) (*spoke in Spanish*): I have the honour of addressing the Security Council on behalf of the 19 member countries of the Rio Group: Argentina, Bolivia, Brazil, Chile, Colombia, the Dominion Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela and, of course, that of my own delegation, Costa Rica.

Mr. President, we are pleased that you have convened this open debate to respond to a grave problem that brings into conflict the system of peacekeeping operations and the international community's resolve to create a permanent mechanism of criminal law.

The Rio Group welcomes the creation, and supports the prompt establishment of, the International Criminal Court (ICC) as an effective, independent and impartial judicial entity with the authority to judge crimes that violate the dignity of human beings. This past 12 April, our heads of State — gathered in San José, Costa Rica, where they took note of the entry into force of the Rome Statute — underlined the historic importance of the creation of the ICC and urged countries that had not acceded to or ratified the Statute to do so promptly.

Similarly, on 4 June, the General Assembly of the Organization of American States urged its member States

> "to participate in the meetings of the Preparatory Committee of the International Criminal Court, with a view to ensuring optimal operating conditions for the Court once it is established, in the context of unwavering protection of the integrity of the Statute of Rome." (*AG/RES. 1770 (XXXI-O/01) para. 2*).

In this context, the member States of the Rio Group cannot fail to express their concern at the Security Council's consideration of the proposal to grant absolute immunity to the personnel of peacekeeping operations, in violation of the letter and the spirit of the Rome Statute. In our opinion, the proposal is completely without legal foundation because article 16 of the Rome Statute, invoked by the proposal's advocates, refers to an entirely different situation. We believe that the Rome Statute already provides the necessary safeguards for preventing a politicized or inappropriate use of the ICC. In this context, we support the Secretary-General's assessment

of the proposal, as set out in his letter of 3 July of this year.

The States Members of the Rio Group cannot accept any erosion of the Rome Statute. We consider it essential to maintain the integrity of its provisions, and we note that any proposal for its modification must respect the established norms and procedures of general international law, of the law of treaties and of the Rome Statute itself. We are therefore concerned at any initiative attempting to substantially modify the provisions of the Statute by means of a Council resolution. To adopt this kind of proposal would exceed the competence of the Security Council and would have a serious impact on the Council's credibility and legitimacy.

As well, the States members of the Rio Group cannot fail to express our great concern at the fact that the entire peacekeeping system might be jeopardized by an erroneous interpretation of the provisions of the Rome Statute. We are concerned at the fact that on 30 June the resolution to extend the mandate of the peacekeeping mission in Bosnia and Herzegovina was vetoed. We believe that it is essential to preserve and to consolidate the achievements of that mission, in the fulfilment of the Security Council's own responsibilities towards international peace and security.

The Rio Group vehemently calls on the Security Council to find a solution to the present impasse that respects the letter and the spirit of the Rome Statute and that ensures the effectiveness and the legitimacy of that body. We therefore call on the Security Council to bear in mind the desire of the entire international community to possess an effective and impartial instrument ensuring the punishment of the authors of the most serious crimes committed against humanity.

The President: The next speaker inscribed on my list is the representative of the Islamic Republic of Iran. I invite him to take a seat at the Council table and to make his statement.

Mr. Fadaifard (Islamic Republic of Iran): I wish to begin by thanking you, Sir, for holding this open debate on an important development in the Security Council, which is of great importance to the general membership of the United Nations.

The United Nations Mission in Bosnia and Herzegovina (UNMIBH) has thus far been a stabilizing factor for Bosnia and Herzegovina and the whole Balkan region. It has played a very important role in implementing the peace agreement in that country by helping its Government train and equip a professional police force. However, given the fact that the peace process is still fragile and the new Bosnian institutions continue to be under pressure from some nationalist forces, it is important that the Mission continue its work and wind down in an orderly way at an appropriate time. There is no doubt that the premature termination of UNMIBH's mandate will leave its programmes uncompleted and jeopardize the previous achievements of the international community in Bosnia. Such a prospect may also hurt the ongoing efforts in the wider region.

It is unfortunate that the disagreement on the International Criminal Court is not only casting a shadow on the existence of UNMIBH but is also jeopardizing United Nations peacekeeping operations in other parts of the world. Therefore, we believe that the potential implication of the current impasse for the whole of United Nations peacekeeping should also be taken into account. United Nations peacekeeping is a very important and effective tool for the international community to promote peace and security across the world.

My delegation regrets that a one-sided approach adopted by one member of the Security Council, which frequently resorts to the veto to serve its own national interests, is, inter alia, putting in jeopardy the future of United Nations peacekeeping. The threat to do the same with regard to other peacekeeping mandates that come up for renewal is most troubling. Undoubtedly, such an approach runs counter to the spirit and letter of the Charter, especially Article 24, which maintains that the Council acts on behalf of the general membership.

My delegation does not see any logic whatsoever in the attempts over the past few weeks to disrupt the work of a successful United Nations mission, which includes, among other things, combating organized crime and terrorism.

As far as the Statute of the International Criminal Court is concerned, we expect that all members of the Security Council take note of and accept the fact that the Council is not authorized to interpret or amend treaties concluded among States in accordance with the law of treaties — a law that recognizes that only parties to a treaty are competent to interpret or amend it.

The Islamic Republic of Iran has signed the Statute of the International Criminal Court, and studies are under way in my country with a view to presenting it to the parliament for ratification. We believe that the principles and values laid down in the Statute will enable the Court to become an effective organ for the international community to combat the most serious crimes and render justice to victims of war crimes.

We hope that the ongoing consultations in the Council do not result in undermining the International Criminal Court.

The President: The next speaker inscribed on my list is the representative of Jordan. I invite him to take a seat at the Council table and to make his statement.

Prince Zeid Ra'ad Zeid Al-Hussein (Jordan) (*spoke in Arabic*): At the outset, I would like to congratulate you, Sir, on your assumption of the presidency of the Security Council for this month and to wish you every success in discharging the task with which you have been entrusted. We have every confidence in your ability to fulfil your responsibilities. I would also like to thank the Permanent Representative of sisterly Syria, Ambassador Mikhail Wehbe, for his distinguished efforts as President of the Council during the month of June.

(*spoke in English*)

In the Holocaust Museum in Washington, D.C., there exist images and artefacts of a time, falling well within the lifespan of many around this table, when the breadth of human brutality found its full expression, a time which showed shamefully just how primordial we human beings still are. Almost 50 years later, the genocide in Rwanda was searing further proof of the resilience of this lamentable fact — a genocide inflicted by machete and carried out virtually without interruption over the course of several weeks, in spite of the existence of the Security Council, its membership and all the potential political and military power which exists therein.

If we are ever to change all of this, to offer some sort of permanent juridical deterrent to the most vile criminals of the future, the only discussion we should be having now — one week after the Statute of the International Criminal Court (ICC) has entered into force — is on how best we can assist the Court. For the Security Council to contemplate anything else, anything which falls short of that, is to offer comfort to the criminals of tomorrow. And should the Council consider again the adoption of a draft resolution on the ICC falling under chapter VII, it will edge itself toward acting *ultra vires* — that is, beyond its authority under the Charter. After all, how could it adopt a chapter VII resolution on the Court when the latter cannot by any stretch of the imagination be considered a threat to international peace and security?

We have heard the arguments put forward by our friend and colleague Ambassador John Negroponte, and the point is taken. The United States enjoys a uniqueness, a primacy, in world affairs today, demonstrated in part by the significant contribution it makes to global peacekeeping efforts, leaving it vulnerable therefore to the possibility of politically motivated charges being levelled at it by different actors in the field.

We join others in believing that the existing safeguards in the Rome Statute are sufficient in reducing to an absolute minimum the likelihood the Court will take up a dubious charge. Having heard the concerns of the United States, we will strive together with all States parties to ensure, through the Assembly of States Parties, that the Court will discharge its duties fairly and effectively, and unencumbered by political considerations.

We are opposed, however, to any course of action by the Security Council the effect of which would be not only to undermine the Court, but to also deliver a crippling blow to the manner by which the international community negotiates multilateral treaties in the future. Moreover, it is almost inconceivable, given the obligations conferred upon it by Article 24 of the Charter, that the Council could ponder putting at risk the lives, potentially, of millions of people by placing existing peacekeeping operations in jeopardy because of differences of opinion over the International Criminal Court.

The all too many memorials scattered around the globe from Bosnia and Herzegovina to Phnom Penh, commemorating the victims of mass murder, as well as the images that reside in the Holocaust Museum in Washington, D.C., impel us to support the International Criminal Court in this way, above and beyond all other considerations. It would surprise no one here today were we to note that more innocent people have lost their lives violently by way of genocide, war crimes and crimes against humanity over the last century, than

in all previous centuries combined stretching back two millennia. Not supporting the Court will not so much be a matter of our failing future generations — in the same way former generations failed the victims of yesteryear — but of whether, by the end of this century, there will be any generations left to fail.

Mr. Wang Yingfan (China) (*spoke in Chinese*): Thanks to almost half a century's effort, the International Criminal Court (ICC) will commence operation as a relevant institution of international justice. It is the hope of the world's peoples that this institution will ensure that perpetrators of serious international crimes are brought to justice, and will deter future crimes. If the ICC attains those goals, then it will boost people's confidence in international justice and ultimately will aid in maintaining world peace and security. Although China is not yet a State party to the Statute of the ICC, China supports the establishment of an independent, impartial, competent international criminal court that enjoys universality. The Chinese Government actively participated in the process of establishing the ICC and will closely follow its operation.

With the 1 July 2002 entry into force of the Rome Statute, the exclusive jurisdiction of countries contributing peacekeepers over crimes committed by their personnel has become a major question that commands the attention of all parties. We believe the ultimate goal of the ICC is to solve the problem of impunity for the perpetrators of serious international crimes and, most important, to bring them to justice. A very important principle of the ICC is complementarity, that is that the jurisdiction of the ICC complements a country's national jurisdiction. Therefore, if a country has brought a person to justice through its national justice system, then ICC has no jurisdiction.

The item under discussion today is the situation in Bosnia and Herzegovina. However, the content of our discussion is far beyond the renewal of the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) per se. China hopes for a successful and smooth renewal of the mandate of UNMIBH and for the completion of United Nations peacekeeping operations in Bosnia and Herzegovina and elsewhere. We also believe that the most urgent current task is to find a practical solution.

Such a solution must respect the letter and spirit of the ICC Statute and accommodate the views and wishes of ICC States Parties. At the same time, without violating the principles of the ICC, it should fully address the concerns and requests of countries sending peacekeepers regarding jurisdiction over crimes committed by such peacekeepers. Thanks to recent efforts, the Security Council is not far from such a solution. We hope that the parties concerned can demonstrate greater flexibility and promptly solve these problems. China definitely does not wish to see United Nations peacekeeping operations affected in any negative way.

Mr. Gatilov (Russian Federation) (*spoke in Russian*): First, Mr. President, let me express my gratitude to you for having organized today's meeting of the Security Council on a question which has recently become a matter of constant tension among an overwhelming majority of States Members of the United Nations. The value of this meeting is in enabling us to better understand the approaches to this matter adopted by various States. Questions of legal status and additional safeguards accorded to peacekeepers in the context of the jurisdiction of the International Criminal Court (ICC) are multi-faceted issues with no easy solution. Here we are discussing one of the key tasks of the United Nations, namely, the unimpeded timely conduct of peacekeeping operations whose success is often decisive for the lives of many thousands of people as well for security and stability in conflict areas.

We understand the concerns of the United States about this. We also understand the position of those who defend the spirit and the letter of the Rome Statute, one of the most authoritative international treaties of our time, whose parties now number more than 75 States, a number that most likely will continue to grow.

We hope a solution will be found to this issue which will not imperil United Nations peacekeeping operations, and which at the same time will remain within the confines of the law and will not diminish the Statute of the Court, which has entered into force. It is not just a matter of taking into account the interests of the significant segment of the world community that supports the ICC; the point is not to damage one of the major spheres of activity of the Security Council: peacekeeping.

We commend the willingness demonstrated by the United States to try to find a solution on the basis of the provisions of the Rome Statute. For our part, we will remain in close contact with all interested parties to try to find a mutually acceptable solution.

Mr. Ryan (Ireland): Ireland welcomes this public meeting of the Council. It provides a timely opportunity for a more inclusive debate on a complex and highly sensitive issue of central importance to all of us. Ireland subscribes fully to the statement that was made earlier in the debate by the representative of Denmark on behalf of the European Union. We are strongly committed to the Common Position of the Union concerning the International Criminal Court (ICC). Ireland has ratified the Rome Statute. We did so, having amended our Constitution, following a popular referendum.

The recent exchanges in the Council have registered clearly with the broad international community that the United States Government has what it genuinely believes to be soundly based problems with the International Criminal Court and its impact on United States personnel serving in peace operations.

At every stage during the past few difficult weeks, Ireland has confirmed that it will work with other members of the Council to achieve a pragmatic and reasonable outcome in response to the concerns that have been put forward by the United States regarding the operation of the Court and the position of United States personnel in peace operations mandated or authorized by the United Nations.

While we understand the concerns of the United States, we do not feel that they are well founded. Nor can we agree to the mechanism that it has proposed, hitherto, to allay them. We consider that the Rome Statute of the ICC already contains adequate safeguards against politically inspired investigations or prosecutions before the Court. Military or diplomatic personnel from any country, including those from non-parties to the Rome Statute, who serve in United-Nations-authorized operations, are covered by those safeguards. The Rome Statute enshrines the principle of complementarity, which rightly accords priority to national judicial processes. In the context of peacekeeping, that priority role falls to the national judicial processes in the contributing State.

The Statute also allows for bilateral agreements, such as those envisaged in article 98, paragraph 2. In addition, the Statute allows for a deferral by the Court of an investigation or prosecution pursuant to a request by the Security Council, as provided for in article 16 of the Statute.

The development of international law is one of the great achievements of humankind in recent decades. International treaties have their own integrity, which must be protected. This, for Ireland, is a fundamental principle. The Security Council must respect the spirit and letter of this wider fabric of international law and international cooperation. In that connection, we are disturbed by the possibility that, if it is not handled adroitly, the present exercise could have adverse effects on the credibility and prestige of the Security Council itself.

We greatly regret the uncertainty that has been brought upon the functioning of the United Nations Mission in Bosnia and Herzegovina and the Stabilization Force. Beyond that, it would be a grave matter indeed if the current impasse in the Council were to affect a whole series of other operations as their mandates come up for renewal.

There are a number of important, essentially free-standing, but now politically intertwined, factors involved here: the role of the Council and how it functions; the primacy and integrity of international law; the future of United Nations peace operations; and the crucial role that the United States has to play in support of those operations. Taken together, these factors present a challenge. I have described briefly the principles that guide Ireland's approach to that challenge. I have also set out some of the preoccupations of my Government, as well as legal factors underpinning our position and approach. Taking account of those principles and preoccupations, let me reiterate that we are open to a reasonable way forward that is legally and politically sound and that will quickly resolve the matter while meeting valid concerns.

Ireland will pay the utmost attention to the views expressed by the wider membership of the United Nations at this meeting, in the conviction that any solution to the current impasse will need to preserve, not harm, the standing of the United Nations as a whole.

The President: I shall call on the next four speakers from among non-members of the Council.

The next speaker inscribed on my list is the representative of Mongolia. I invite him to take a seat at the Council table and to make his statement.

Mr. Enkhsaikhan (Mongolia): I would like to thank you, Mr. President, for holding this open Council debate in connection with the question of the extension of the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH). Bearing in mind that this question affects the principles of United Nations peacekeeping and the basis of the making of international law, we believe that this meeting is wise and very timely, especially given that the Council is consulting with the broader membership of the United Nations. Over the past three weeks, we, like many other delegations, have been closely following efforts within this Council to maintain peacekeeping missions without undermining the integrity of the newly established Rome Statute of the International Criminal Court (ICC).

Article 24 of the Charter confers on the Security Council primary responsibility for the maintenance of international peace and security. Member States view the Council as the main United Nations body that is called upon, not only to strengthen international peace and security, but also to safeguard their sovereignty and independence in case of threats or crisis. It is because of this trust and faith that Member States agree, in Article 25 of the Charter, to accept and carry out the decisions of the Council. Mongolia believes that the Security Council has played a unique role in the past, and expects it to do so in the future.

The ICC was officially established on 1 July this year. An important step was thus taken to strengthen peace through promoting and upholding international law and justice. The ICC is expected to be a permanent, independent, impartial international court. It will not be bound by mandates that are specific in time or place. Its provisions are consistent with the Charter of the United Nations and are based on the principle of respect for the sovereignty of States, which is manifested, inter alia, in the principle of complementarity of its jurisdiction. In other words, the Court would take action only when national legal systems were unable or unwilling to genuinely investigate or prosecute. Moreover, the Court has *ratione temporis* jurisdiction; that is, it has jurisdiction only with respect to crimes committed after 1 July 2002.

Under article 16 of the Statute, the Council can request, under chapter VII of the Charter, the deferral of the investigation or prosecution of a case for a period of 12 months. The request may be renewed by the Council under the same conditions. Previous speakers have dwelt on the importance of the Court in strengthening international peace and security and in preventing and putting an end to impunity for the perpetration of such heinous crimes as genocide, crimes against humanity and war crimes, and I will not repeat their comments. I would say only that in the short time since its adoption four years ago in Rome, 139 States have signed and 76 States have ratified the Statute. That in itself demonstrates how much trust is being placed in the ICC and its activities.

Logically and legally, the two bodies — the Security Council and the ICC — are expected to work together, not one to the detriment of the other. No State should be placed in a situation in which it is forced to breach its international obligations under either the Charter or the Statute. We believe that the Security Council and the ICC should work together to strengthen international peace and security, the rule of law and international justice.

Mongolia, one of the founding members of the ICC, has, like all others, been interested in maintaining the integrity and effectiveness of the Court since the very first days of its existence. We have faith in the integrity of the Court, since — as has been pointed out by many of the preceding speakers — the Statute has adequate safeguards against its possible abuse. We believe that, through its activities, the Court will be able to dispel any lingering doubts as to its impartiality or effectiveness. When considering the Court's jurisdiction, we should not forget that the main objective of the ICC is the prosecution of individuals for the most heinous of crimes, as defined in articles 5, 6, 7 and 8 of the Statute. In other words, when looking at a tree, one should not forget the forest that lies behind it.

Since Mongolia is not a member of the Council, my delegation will refrain at this stage from commenting on the content of unofficial working documents connected with the question of extending the Mission's mandate. Besides, many States already expressed their views and concerns during the special

plenary of the tenth Preparatory Committee for the ICC on 3 July 2002.

At this meeting, I wish to join all other delegations in underlining once again the vital importance of safeguarding not only the integrity of peacekeeping operations but also of the Rome Statute and thus of international law and treaty-making, the rule of law, and the integrity of the Council itself.

Bearing in mind your personal experience, Mr. President, that of your colleagues in the Council and the views expressed by delegations during this open debate, my delegation expresses the hope that the Council will be able to find a solution that would respect the spirit and letter of the Statute without undermining the effective functioning of the Court, the Council or peacekeeping operations. My delegation is prepared to work with other delegations, if needed, to join in the search for an effective solution to this question of principle.

The President: The next speaker inscribed on my list is the representative of Liechtenstein. I invite her to take a seat at the Council and to make her statement.

Mrs. Fritsche (Liechtenstein): There have been few occasions on which an open debate of the Security Council has been more necessary. What is under discussion is not merely the future of the International Criminal Court (ICC) — a landmark achievement in the history of international law — but also, and what is more, the role and the credibility of the Security Council.

The mandate of the Council under the United Nations Charter does not lack clarity. A transgression of this mandate as a result of the ongoing debate would have not only disastrous consequences for the ICC, but maybe even more devastating ones for the Council itself. We do not want to see the Council put itself in a position in which the United Nations membership at large is forced to question the legality of one of its decisions. Such a situation would have a devastating impact on the credibility of the Council and thus of the Organization as a whole. I would like to comment in this regard on the following two approaches contemplated within the Council to resolve the current impasse.

The one under discussion last week invokes article 16 of the Rome Statute, while effectively amending it. As has been said by many over the past few days, and most prominently by Secretary-General Kofi Annan, this would constitute an action outside the mandate of the Security Council and fundamentally affect the process of treaty-making as practiced in the United Nations.

The other approach which has been explored is a "generic resolution" which would address the role of the ICC with regard to peacekeeping in general, rather than in conjunction with a specific peacekeeping operation. This could be based only on the untenable notion that the International Criminal Court constitutes a threat to international peace and security.

The conclusion must by necessity be that neither of the two approaches is viable, both politically and legally speaking.

The concerns expressed with regard to the International Criminal Court are well known. Indeed, they were discussed at length at the Diplomatic Conference in Rome. While not everybody deemed it necessary during the course of those negotiations, the view prevailed in the end that it was advisable to make a massive effort to address these concerns. As a result, the Rome Statute provides for a number of painstakingly drafted safeguards to prevent frivolous and politically motivated investigations and prosecutions, the principle of complementarity being the most crucial one. This effort was carried out in good faith and with creative thinking flowing from some of the best available expertise in the area of international law. We are disappointed that this genuine effort has not met with the appreciation we believe it deserves, and we have serious difficulties in understanding the substantive reasons for that.

Peacekeeping and international justice are, to our minds, complementary concepts. We find it therefore disturbing that some of the discussions under way treat them, in effect, as mutually exclusive. There can be no choice between one or the other, when the international community so obviously needs both. The progressive development of international law and respect for the rule of law, as well as the maintenance of international peace and security, are core activities of the United Nations, and they both must be treated as such. No choice can be made here, and the Council must therefore not impose such a choice on itself.

We are aware that many avenues have been explored to find a viable solution to the prevailing deadlock. A magic formula seems not to have been

found yet, and I would like to refer to the remarks made by Canada and France as positive contributions in this respect. Whatever options are considered, in the end the question always comes down to whether or not to respect a treaty adopted by a Diplomatic Conference and ratified by 76 States. We believe, both as a State party to the Statute and as a Member of the United Nations, that the answer is obvious and that the preservation of the integrity of the Statute is the only way for the Council to preserve its credibility and effectiveness.

The President: The next speaker inscribed on my list is the representative of Brazil. I invite him to take a seat at the Council table and to make his statement.

Mr. Fonseca (Brazil): We appreciate the difficulty of the predicament the Security Council is facing today. But in our view, this predicament is based on a false dilemma. The maintenance of international peace and security and the repression of heinous crimes committed against humanity are not — and by all means cannot be viewed as if they were — two conflicting objectives.

On the contrary, peacekeeping operations and the institution of the International Criminal Court (ICC) are two important pillars for the realization of United Nations goals, and we have to make sure that both instruments work in a coherent and mutually reinforcing manner.

That is precisely the reason why the Rome Statute relies so deeply on a solid and very well crafted relationship between the Council and the Court.

The decision to join an international treaty falls within the purview of each country's sovereignty. Brazil has already taken its own decision with respect to the ICC and fully respects what others may decide in accordance with their own interest and perceptions. We were nevertheless struck by the very unusual decision to "unsign" an international legal instrument negotiated in good faith.

We understand that the ICC represents the culmination of a process in our collective endeavour to uphold human rights and defend them in every part of the world. We trust that the creation of the ICC represents a new asset for humankind and that its very existence will contribute to making our world more stable and conflict situations less threatening to innocent people.

Nevertheless, we must face the fact that differences of view on this matter can arise, given the political implications of the Tribunal's jurisdiction and in the light of our differing legal and constitutional systems. But there can be no doubt that we all share the same resolute determination to make sure that the horrors of genocide, crimes against humanity and war crimes defined in the Rome Statute will no longer go unpunished or benefit from spurious immunities. That is the clear message that all bodies of the United Nations must convey.

Brazil aligns itself with those who are firmly convinced that the Rome Statute provides all the necessary checks and balances against possible abuses and politically motivated misuse of the ICC's jurisdiction. Articles 16 and 98, paragraph 2, are only two examples. And there are many more, starting with the very nature of the complementary jurisdiction of the Court.

It is inconceivable that peacekeepers mandated by the United Nations could ever be associated with the kinds of crimes that fall within the jurisdiction of the ICC. That has never happened, and it is most unlikely that it ever will happen. Should it occur, however, it is essential that the perpetrators be brought to justice to preserve the mandate and the authority of the mission.

The United Nations cannot intervene or authorize military intervention in any specific situation, only to end up denying the very values upon which the Organization was founded. We cannot accept — even in theory — the possibility that peacekeeping might be regarded as a haven for the commission of crimes against humanity. That is why it is so difficult for us to accept the terms under which the discussion of the extension of the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) is taking place.

We came here to make a strong appeal to all members of the Council not to take hasty decisions that might cause irreparable damage to peacekeeping, to the rule of international law and to the very credibility of the Council. We understand that the Council faces a genuine problem, to which an appropriate solution must be found. That solution is not self-evident or immediately available, but we are confident that it is not beyond reach within a reasonable amount of time.

We strongly discourage proposals or initiatives that ultimately seek to reinterpret or review the Rome Statute, especially with respect to article 16, whose provisions are applicable only on a case-by-case basis and were never intended to give place to *ad aeternam* deferrals of the Court's jurisdiction. The Security Council must not take action that might, in the words of the Secretary General in his letter to Secretary of State Colin Powell on 3 July, "[fly] in the face of treaty law". The Council cannot alter international agreements that have been duly negotiated and freely entered into by States parties. The Council is not vested with treaty-making and treaty-reviewing powers. It cannot create new obligations for the States parties to the Rome Statute, which is an international treaty that can be amended only through the procedures provided in articles 121 and 122 of the Statute.

Let me return to my initial point. The Security Council and the International Criminal Court do not have competing jurisdictions. They must not represent a threat to each other's legitimate competence under the Charter and the Rome Statute. The Council would be doing a tremendous disservice to its own authority and credibility if it encroached unduly on the Court's proceedings and jurisdiction. Any decision by the Council that overreaches its mandate may risk not being accepted by the States parties to the Rome Statute.

The question before us today is undoubtedly complex and requires time to be considered appropriately. We believe that a satisfactory solution is possible, and we encourage the Council to continue advancing proposals with a view to ensuring a constructive outcome. A compromise solution must be found to ensure the continuity of peacekeeping operations while respecting the specific concerns of individual States. But let me stress that compromise must not come at any cost; it must not infringe upon the autonomy or the authority of the Court.

Brazil looks forward to contributing, in cooperation with the Security Council, to a solution that reaffirms our dedication to the fostering of international peace and security and preserves the integrity of the International Criminal Court. In the meantime, we believe that the renewal of peacekeeping mandates should not be held hostage to any country's individual perceptions and that a provisional modus operandi should be established. That could involve the possibility for any country to decline participation in peacekeeping operations whenever it feels that its troops would be subject to unacceptable risks, and the possibility to make full use of bilateral agreements under article 98, paragraph 2, of the Rome Statute. In the specific case of UNMIBH, and given the present circumstances, we would favour an accelerated schedule for the handover of the police training programme, the continuation of which seems to be crucial to ensuring the consolidation of the international community's efforts in Bosnia and Herzegovina.

Security Council members have a special responsibility to maintain and promote a stable world order, and it is the Council's duty to make every effort to sustain international law and to help make it universal; this is the only real source of legitimacy in a world based on justice for all. The creation of unnecessary and unjustifiable exceptions to the rule of law with regard to international behaviour would be a denial of that principle and a dangerous setback for the Organization.

The President: The next speaker inscribed on my list is the Permanent Observer of Switzerland. I invite him to take a seat at the Council table and to make his statement.

Mr. Staehelin (Switzerland) (*spoke in French*): The Security Council is now called upon to tackle a question of considerable import, and for that reason, I am grateful to you, Mr. President, and to the other members of the Council for giving me the floor.

The Council is discussing a peacekeeping operation — one to which Switzerland, moreover, contributes. But what is at stake goes well beyond that. Let me explain. Peacekeeping operations are a necessity. International peace and security depend on them in a number of sensitive regions of the world. In our view, the exercise of international criminal jurisdiction is not in contradiction with the carrying out of such operations — quite the contrary.

However, it is proper to prevent criminal cases from being brought frivolously or for politically motivated reasons. We share that conviction with all those who have expressed it. We even think that safeguards could be provided in that regard. However, we must choose adequate means to attain that objective.

The Security Council's adoption of a resolution modifying a treaty that is in conformity with the Charter of the United Nations is inconceivable as a solution. That would be a serious development for the future of international law and of the United Nations, and it would directly affect the authority of the Council itself. We fully share the views expressed on that subject by the Secretary-General.

The Rome Statute itself and the rules developed for its application embody numerous safeguards introduced to take into account the reservations of certain States. Clearly, the best way for a State to render one of its nationals immune to the jurisdiction of the International Criminal Court (ICC) is to exercise its own criminal jurisdiction. I know that, despite all this, concerns remain. In our view, they can be taken into account in a fully satisfactory way by assuming an approach that takes into account the specific characteristics of every case. It seems to us that only six peacekeeping operations may involve sensitive aspects in terms of the ICC. Moreover, they raise different issues.

Seeking a solution through a general resolution, which would thus be applicable to all 15 United Nations peacekeeping operations, would create more problems than it would resolve. It should not be attempted. The solution is to insert specific clauses into the resolutions concerning the six operations to which I have referred. For example, the case of Bosnia could be resolved without much difficulty. The International Criminal Tribunal for the former Yugoslavia has primacy in the exercise of international criminal jurisdiction. The resolution could recall this in an appropriate way.

Furthermore, the Rome Statute provides for special arrangements to be concluded between contributor States and third States. The ICC could not proceed with the execution of a request for surrender that was contrary to such a special agreement. We wonder whether this option has been sufficiently explored.

In conclusion, I wish once again to refer to the right of the Security Council to bring about the suspension of a criminal proceeding, pursuant to article 16 of the Rome Statute. We have no objection to the Council expressing the intention to make use of it in the future in specific cases of powers conferred on it by article 16, provided it is done in accordance with that norm. But generalized preventive usage of article 16 would be contrary to the Treaty.

The President: I will now take the next four speakers on the Council list: Singapore, Mauritius, Mexico and Norway.

Mr. Mahbubani (Singapore): We welcome your decision, Mr. President, to convene this open meeting. The high level of participation and interest in this debate confirms the wisdom of having such an open discussion.

Our stated purpose here is to discuss the renewal of the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH). As is well known, it expired on 21 June 2002, and it has since been extended by technical rollovers. There is no question that UNMIBH performs a valuable function and that its mandate ought to be renewed. But, as is also well known, UNMIBH's fate has become entangled in a more fundamental and controversial debate over exemption from extra-national judicial processes for United Nations peacekeepers. The Security Council has been at an impasse over this broader question, not over the question of extending UNMIBH's mandate.

This dilemma is acute because the arguments advanced by both sides in this debate cannot be dismissed as being without merit. Article 16 of the International Criminal Court Statute (ICC) provides as follows:

> "No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions."

It has now been proposed that article 16 be indefinitely and automatically renewed. It has also been argued that it is within the Security Council's authority to do so. Article 103 of the Charter provides for Charter obligations to prevail in the event of a conflict between Charter obligations and other international obligations. The question here is whether it is desirable for the Council to take such action. We note that this question of desirability of Council action

has indeed been addressed by several speakers in the debate today.

Singapore has not yet acceded to the ICC Statute, but, as a small State, it is in our fundamental interests to exist in a rule-based international order. We are, therefore, concerned that the Security Council does nothing to undermine the viability and the integrity of the multilateral legal framework. As a small State, we are equally concerned with the credibility of global institutions like the United Nations. We recognize the importance of removing obstacles to the deployment of peacekeepers in order to ensure that the Security Council can respond effectively to threats to international peace and security. The Council's effectiveness will be severely damaged if its peacekeeping functions are jeopardized.

It is axiomatic that the United Nations can only be as effective as its Members allow it to be. The configuration of international power has changed drastically since the Charter was drafted. It is a reality that the United States deploys disproportionate strategic weight in the post-cold-war world. This is a reality that we cannot brush aside. The principles engaged by this issue are important, but it is equally important to factor in the United States contribution to peacekeeping. As the representative of Denmark, speaking on behalf of the European Union earlier, said:

> "Let me stress that the European Union attaches great importance to the continued and major contribution of the United States to peacekeeping missions around the world."

The international community's interest in maintaining the integrity of the multilateral legal framework must be balanced against what is politically practical under the circumstances and by what will serve the larger political interests of the international community. As this debate in the Security Council has unfolded over the past few weeks — and there have been many, many discussions on the subject — my delegation has been encouraged by a significant change of approach.

Instead of insisting on stock ideological positions that make compromise impossible, there has been an effort to temper principle with prudence and to seek pragmatic solutions. This does not make the dilemma any less acute, but it does point in the direction in which the political compromise can be sought. By their very nature, political compromises are never perfect, but we live in an imperfect world. Our duty is to find practical and workable solutions to ensure that the good work done by UNMIBH is not unravelled and that the future of the people of Bosnia and Herzegovina and the broader interest of the international community are not jeopardized.

Finally, we note that the United States is trying to seek a solution within the ICC framework through article 16 of the ICC Statute. The first operative paragraph of the latest United States proposal states:

> "Requests, consistent with the provisions of article 16 of the Rome Statute, that the ICC for a 12-month period shall not commence or proceed with any investigations or prosecutions".

Article 16 is also the basis of the proposals tabled by France and the United Kingdom, the thrust of which we have supported. We believe that, with creative drafting, there is hope for consensus to be built around article 16.

Mr. Koonjul (Mauritius): As an African member of the Council, let me first of all express our sincere thanks for the words of congratulations on the launching of the African Union. It is indeed a new beginning for Africa.

My delegation is particularly pleased that a meeting such as this is being conducted before the adoption of a draft resolution on Bosnia and Herzegovina, as it adds to the transparency and openness of the Council that we are all striving persistently to achieve. This is most appropriate and timely, as any future decision regarding peacekeeping operations will be able to mirror the views and comments not only of the 15 States members of the Council, but also of the wider membership of the United Nations, which is actively participating in the debate today.

The United Nations Mission in Bosnia and Herzegovina (UNMIBH) has been playing a significant role in the maintenance of peace and stability in the Balkans. Its presence on the ground has been instrumental in the establishment of law and order in Bosnia and Herzegovina. Any hesitancy in the renewal of its mandate will create serious doubt in the minds of the people of Bosnia and Herzegovina. Continued uncertainty in UNMIBH's operations will be counterproductive and may undermine the progress achieved so far.

We have recently had one renewal of UNMIBH's mandate for three days, followed by another one for 15 days, which will lapse on 15 July. The Mission's continued operation now depends upon the concerns raised by one delegation as regards the applicability of the provisions of the Rome Statute. That delegation, as a non-party to the Rome Statute, insists that the Council adopt a resolution to ensure that its peacekeepers and those of other contributing countries not party to the International Criminal Court (ICC) enjoy complete immunity from the jurisdiction of the Court. We do not share that view, as we do not believe that peacekeepers, by the very nature of their duties, would be involved in any crime falling under the purview of the ICC. In fact, past history does not include any instance where any peacekeeper has been the author of a crime that could fall within the Court's jurisdiction.

In any case, it must be emphasized that the ICC is complementary to national justice systems and that, since status of forces agreements entered into between host countries and contributing countries provide for the repatriation and prosecution in the contributing country of any peacekeeper allegedly accused of misbehaviour. We therefore do not understand how the ICC can pose a threat to any peacekeeper. Indeed, we have complete trust in the justice systems of all law-abiding States.

My delegation has strong reservations about the proposal for blanket immunity to be granted to any particular individual or group of individuals from the jurisdiction of the ICC. Mauritius believes in the constitutional principle of equality before the law. The Rome Statute, establishing the International Criminal Court, has been elevated to almost universal acceptance by the signatures of more than 139 countries and the ratification by 76 of them within four years of its adoption. It would indeed be inappropriate to undermine such a universally accepted international treaty.

The United States has proposed that article 16 of the ICC Statute be used by the Council to provide blanket immunity to peacekeepers. Mauritius maintains that article 16 of the Rome Statute should be invoked only on a case-by-case basis when the Court is seized of a specific case. We fully subscribe to the view expressed by the Secretary-General that the provisions of article 16 mean that the Security Council can intervene to request the ICC prosecutor to defer the process of investigation and prosecution on a case-by-case basis. Doing otherwise would be tantamount to re-writing article 16, which itself could then in fact be challenged by the Court. Mauritius also believes that the concerns raised by the United States would be best addressed in forums other than this Council, more specifically in the tenth session of the Preparatory Commission for the Court. The Rome Statute contains built-in checks and balances, and the treaty has a strong mechanism to ensure that the Court is used only as a last resort.

As a party to the Rome Statute, Mauritius firmly believes that any provision undermining the jurisdiction of the ICC as provided in the Statute would be inconsistent and incompatible with the precepts of international law based on the will of the comity of nations.

Mr. Aguilar Zinser (Mexico) (*spoke in Spanish*): As other delegations have done, my delegation would like to take this opportunity to welcome the establishment of the new African Union, with all the expectations to which that event gives rise.

My delegation would also like to associate itself with the statement made by Costa Rica on behalf of the Rio Group.

The holding of this public debate opens up new avenues for dialogue to enable us to listen to and understand the concerns of States Members of the United Nations with regard to issues that are of crucial importance to us. This occasion should also be viewed as an opportune moment to make the working methods of the Security Council patently transparent.

While we welcome this debate, we are concerned at the course taken by attempts to renew the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH), in that it has brought together four diverse elements that we would have preferred not be mingled in a single debate. The first element at stake is the effort to maintain peace and security in the Balkans through the activities of the United Nations. Secondly, great uncertainty has developed with regard to the capacity of the United Nations to renew a mandate or to deploy new peacekeeping operations in order to fulfil its purposes. Thirdly, questions have been raised regarding the very applicability and universality of international law. Lastly, and fourthly, debate has arisen concerning universal commitment to the Rome Statute, which establishes the International Criminal

Court. Today's debate is therefore wide in scope and goes beyond the issues of peacekeeping operations and the International Criminal Court. The Secretary-General's 3 July letter to Secretary of State Powell clearly and eloquently reflects the situation.

As far as the renewal of the mandate of UNMIBH is concerned, Mexico would like to state that this renewal is essential to provide continuity and solidity to the international community's efforts to consolidate peace and stability in the Balkans, thereby enabling the European Union to assume its role in Bosnia and Herzegovina in an orderly fashion. However, despite the efforts made to renew the mandate, it has not been possible to find a solution to the underlying problem raised by the delegation of the United States. In particular, my country is concerned about proposals that would grant countries contributing troops and other personnel to missions established or authorized by the Security Council any sort of immunity vis-à-vis the jurisdiction of the International Criminal Court. My delegation has serious difficulties in subscribing to proposals that would establish such exemption regimes, because of their implications both for the functioning of peacekeeping operations and for the integrity of the system of international jurisdiction.

With regard to the Organization's capacity to deploy peacekeeping operations, my delegation holds that the Member States have collectively decided that the Security Council should act on behalf of us all in discharging its primary responsibility of maintaining international peace and security. Therefore, the legitimacy of the Council's action rests on such decisions being in conformity with the principles of the Charter and of international law. For that reason, my delegation believes that the credibility of the Council's work may be adversely affected with the approval of decisions counter to the integrity of the international legal system.

The Security Council is without question the proper body in which to deal with matters relating to peacekeeping operations. But we doubt whether it is the proper forum in which to deal with matters relating to the International Criminal Court, particularly if what is at issue would undermine one of the essential features of any judicial body: the independent exercise of its jurisdiction.

The adverse consequences of the implementation of the proposal to grant absolute immunity to the personnel of peacekeeping operations are not consistent. On the one hand there is the call for States receiving missions to cooperate fully with international tribunals, including the special tribunals. On the other hand is the exemption of the personnel and troops of those missions from their obligations under the jurisdiction of the International Criminal Court.

Moreover, we — the States parties to the Rome Statute and all States signatories that have committed ourselves to not taking any action, in any circumstances, that would undermine the Courts' objective and purpose — are faced with a dangerous precedent, which, if accepted, would represent a de facto amendment to the Rome Statute. In particular, I am referring to the possibility that the ICC be instructed to suspend the investigation or prosecution of cases of genocide, war crimes or crimes against humanity involving current or former personnel of operations created or authorized by the Security Council.

Similarly, legal institutions such as the law of treaties, one of whose essential objectives is to promote peaceful cooperation among States, would be damaged if we allowed the Council to set the negative precedent of using its resolutions to amend treaties.

Invoking article 16 of the Rome Statute to grant immunity from its jurisdiction to the personnel and troops of missions established and authorized by the Security Council is not acceptable to my delegation. Any decision that attempts to extract article 16 from the Rome Statute and to interpret it in isolation in a manner contrary to its original purpose undermines the implementation of the entire Statute and erodes the fundamental principle of the independence of the Court. Article 16 must have temporary validity and an exceptional application covering specific situations. We cannot accept the need to grant a general suspension with regard to events that have not yet occurred. Even less can we accept that such a suspension might become unlimited.

The action of the Security Council in fulfilling its mandate must be in conformity with the Charter of the United Nations and with international law. For that reason, the Council cannot, in the name of the maintenance of peace and security, set up an exemption

regime that would alter the spirit of the provisions of the Rome Statute.

My delegation would have liked to have seen the United States be a party to the Rome Statute of the International Criminal Court, especially in virtue of its leadership and its very significant and substantial contributions in establishing and promoting other international criminal tribunals. While we regret that recently the United States has clearly stated its intention not to ratify the Statute, my country wishes to state that we have full respect for that decision. In view of this, throughout these weeks of arduous work, we have listened very attentively to the concerns of the United States, and throughout this period we have maintained a receptive attitude towards its proposals and concerns. However, it still appears that we are far from finding points of convergence. While the latest proposals have shown some progress in that they invoke the Statute, it is also true that they continue to represent an interpretation that in Mexico's opinion goes beyond the letter and spirit of article 16 of the Statute.

The text of article 16 was the result of intense negotiations at the Rome diplomatic conference. Its content represents a fine and delicate balance that the Council cannot and must not alter. If it were to follow the route of the initiatives of the United States, the Council would be interpreting the scope of article 16 very broadly, since the article was designed for specific situations with a limited time frame for cases in which it was justified by the need to maintain or to restore international peace and security.

We are confident the United States will find a way to resolve its concerns in this framework, given that the Statute contains sufficient safeguards to protect the legitimate interests of States parties and of States not parties to the Statute.

The Statute is grounded in the principle of complementarity. As has been stated, this is a guarantee that the international community in no way questions the strict parameters of independence and impartiality governing the operation of the judicial systems of States, in particular of the United States.

With regard to the universal commitment to the Rome Statute, today the United Nations is at an exceptional and historic crossroads. The choice depends on all its Members — an irreparable step backwards or the option that postulates the United Nations and the progressive development of international law as civilizing factors that promote international cooperation, the legitimacy of international institutions, and the strengthening of a system of justice of universal scope to punish those who commit the most grievous and far-reaching crimes against the international community.

The Government of Mexico considers respect for human rights and the validity of international law as an unshirkable commitment. Our signing of the Rome Statute and the constitutional process now under way in Mexico to ratify it oblige us to defend its objectives and focus our actions unequivocally on upholding its application.

For those reasons, my delegation is not in a position to accept any decision that would injure the establishment and legitimacy of the International Criminal Court.

Mr. Kolby (Norway): Recent experiences in various regions of the world clearly demonstrate the decisive role played by peacekeeping and crisis management operations in settling violent conflicts and in securing peace and stability. The United Nations must therefore be able to continue to play its crucial role in safeguarding international peace and stability.

The situation we now face entails serious consequences for Bosnia and Herzegovina, which could place the reform and reconstruction process in jeopardy. The inability to act could encourage extremist and criminal forces to continue their intransigence. This situation is harmful also in the message that it sends the people of Bosnia and Herzegovina, and indeed of the western Balkan region. The international community must therefore continue to contribute to the stabilization and peaceful development of Bosnia and Herzegovina. We must reaffirm our common commitment to a people that only recently was ravaged by a brutal war, with hundreds of thousands of casualties and millions of refugees.

The United Nations Mission in Bosnia and Herzegovina (UNMIBH) is already in the process of winding down its operations in Bosnia and Herzegovina prior to the planned closure of the mission on 31 December 2002. That process must be allowed to proceed in an orderly manner. UNMIBH's planned withdrawal from Bosnia and Herzegovina does not, however, imply that all the tasks at hand have been dealt with. While important progress has been made,

not the least due to the work of UNMIBH, much more remains to be done. A smooth transfer of responsibilities to other organizations is therefore of the essence. This requires that the handover of tasks be conducted in a prepared and structured manner, and that the necessary time be allowed for this to take place. This point has also been raised by Bosnian authorities and by the High Representative. We should take note of their concern.

It is especially important that the United Nations International Police Task Force (IPTF) be allowed to continue operations during the critical months leading up to the general elections in Bosnia and Herzegovina on 5 October 2002. These will be the first elections organized by Bosnian authorities since the signing of the Dayton Peace Agreement, and they mark a significant milestone in Bosnia and Herzegovina's post-war development.

Extremists on all sides continue to have the potential, as well as the motivation, to create instability and chaos in Bosnia and Herzegovina. Maintenance of public order and security during the forthcoming election campaign is a prerequisite for a successful election process that can provide political stability for the country. While public security remains the primary responsibility of the Bosnian authorities, it remains a fact that the presence of both the International Police Task Force and the Stabilization Force (SFOR) is essential. It is also important with regard to providing security for minority refugee returnees, many of whom have shown considerable personal courage in returning to towns and villages from which they were ethnically cleansed.

The European Union has for some time been preparing for the implementation of the European Union Police Mission as a follow-on to the International Police Task Force as of 1 January 2003, but has more recently signalled willingness to prepare an interim arrangement in the event that the IPTF should be withdrawn prematurely. While Norway highly commends and supports the European Union's response in this critical matter, it remains a second-best option. The preferred option would be for the UNMIBH mandate to be completed as originally planned, thereby allowing for stability in the upcoming election period, and for an orderly transition from the International Police Task Force to the European force.

We all have a responsibility in ensuring that the current situation is solved. A positive outcome is vital in order to maintain the primary responsibility of the United Nations in peacekeeping. Hence, the issue for discussion today has repercussions extending beyond Bosnia and Herzegovina. If we do not reach a solution, the whole system of United Nations peacekeeping operations may be put at risk, with serious effects for those millions of people around the world already threatened by armed conflict or who are in post-conflict areas.

Like many other speakers today, Norway wishes to take this opportunity to reaffirm our full commitment to the new reality of international criminal justice. The establishment of the International Criminal Court on 1 July was indeed a historic step forward in the efforts to build peace through the rule of law. The steady international tide of opinion against impunity for the worst international crimes has made an important breakthrough with the establishment of the Court. Justice and legal order are increasingly being perceived as prerequisites for lasting peace and stability. In that context, we believe that a permanent court may actually be more conducive to peacemaking than ad hoc tribunals set up in the context of a particular conflict.

We are convinced that the Rome Statute of the ICC contains solid safeguards against unwarranted or arbitrary prosecutions. It is important to recall that it can be activated only when impunity has been demonstrated through lack of genuine national prosecution of mass atrocities. The ICC system is solidly founded on primary jurisdiction for national courts.

We recognize that particular concerns have been expressed against the exposure of United Nations peacekeepers to unwarranted prosecutions. The Statute contains, as already mentioned, a system of safeguards against any unwarranted action. Moreover, it is worth recalling the statement by the Secretary-General that in the history of the United Nations no peacekeeper or any other mission personnel have been anywhere near the kind of crimes that fall under the jurisdiction of the ICC.

On the whole, it is our view that the Rome Statute itself provides for an appropriate relationship with the United Nations. The ICC can therefore make important contributions not only in terms of international law, but

also when it comes to promoting international peace and security.

The President: I should like to inform the Council that I have received letters from the representatives of Argentina and Sierra Leone, in which they request to be invited to participate in the discussion of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the discussion, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Listre (Argentina) and Mr. Kamara (Sierra Leone) took seats at the Council table.

The President: The next speaker inscribed on my list is the representative of Thailand. I invite him to take a seat at the Council table and to make his statement.

Mr. Kasemsarn (Thailand): I join other speakers in thanking you, Sir, for holding this important meeting and in congratulating you on your assumption of the presidency of the Council for the month of July.

Thailand has been closely following the Security Council discussions regarding the extension of the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH). As a troop-contributing country with officers attached to the International Police Task Force (IPTF) of UNMIBH, we are concerned about the uncertainty of UNMIBH's operations. UNMIBH's operations have already been extended three times since 21 June 2002. That does not bode well for the effective functioning of UNMIBH or for its main task, the maintenance of law and order in Bosnia and Herzegovina. We therefore hope that the Security Council can quickly reach an agreement to renew UNMIBH's mandate to 31 December 2002, as recommended by the Secretary General, so that its mission can be completed.

Thailand shares the concern expressed by a large majority of United Nations Member States regarding recent developments in the Security Council that could detrimentally affect the credibility and effectiveness of the Rome Statute of the International Criminal Court (ICC), in force since 1 July 2002. The Rome Statute, with 139 signatories and 76 States parties, is the result of several decades of multilateral efforts by the international community of nations to end impunity for perpetrators of the most serious crimes with which the Statute is concerned. The Rome Statute plays a pivotal role in upholding justice and protecting human rights and is thus one of the most important milestones in the evolution of international law. With this in mind, Thailand signed the Statute on 2 October 2000 and has been working hard to fulfil the constitutional requirements for ratification of the Statute.

We fear that these developments in the Security Council may erode the sanctity of international law and multilateralism, and we therefore ask all States to safeguard the independence and the effective functioning of the ICC, which is complementary to national jurisdictions. While recognizing and sympathizing with the various concerns expressed in the Security Council with regard to the ICC, we sincerely hope that the Security Council will find a just solution which fully respects not only the relevant provisions of the Charter of the United Nations but also the letter and spirit of the Rome Statute.

The President: The next speaker inscribed on my list is the representative of Venezuela. I invite her to take a seat at the Council table and to make her statement.

Ms. Pulido Santana (Venezuela) (*spoke in Spanish*): I thank the Council members for allowing me to take the floor at this meeting. We associate ourselves with the statement made by Costa Rica at this meeting on behalf of the Rio Group.

Nine days ago, my delegation, along with all the other participants in the tenth session of the Preparatory Commission for the International Criminal Court rejoiced at the immensely significant and historic entry into force of the Statute of the International Criminal Court. That event was resounding proof that international criminal law is not a theoretical fiction, or a dream of international idealists. On the contrary, it is now a concrete reality whose structure attests to the resolve of States to render the actions of justice effective in the face of the most reprehensible international crimes, which endanger not only international peace and security, but the very existence of humankind.

Venezuela resolutely supported the creation of an international criminal court, taking an active and constructive part in negotiating its establishment. It was one of the first Latin American countries to ratify the Rome Statute, inspired by a deep tradition of democracy, and respect for and promotion of human rights, in keeping with its priority of making justice effective, reliable and transparent, both domestically and on the international level. My country thus sent a message to the international community, which we now reaffirm before the Security Council, concerning the great significance we attach to the International Criminal Court as an autonomous, universal, complementary and impartial jurisdictional mechanism with which to try and punish those responsible for the most abominable international crimes. Creation of the International Criminal Court is emblematic and groundbreaking, not only because it is the first institution associated with the United Nations created in the new century, but, more fundamentally, by its very nature and by the far-reaching importance of its contribution to the building of a new international order, whose architecture we are striving to build on solid foundations of justice and peace, so as to permit development of the necessary conditions for the social and economic development of our peoples.

Our confidence and optimism concerning the effectiveness of the International Criminal Court remain firm. Nonetheless, we feel profound concern at the position taken by certain countries, even when we understand the position, not for the present to join this endeavour of international justice. We are convinced that universal participation must be the cornerstone of this new institution. Universality and effectiveness are, without doubt, inseparable concepts. Likewise, we view with great concern the situation that has arisen within the Council concerning the possibility through a decision, this principal organ might weaken the Statute of the International Criminal Court. Such a decision could modify the scope of an international instrument which is not simply conventional law in the strict sense of the term, but also, to a large extent, reflects customary law accepted by all concerning international jurisdiction and international criminal law. A decision by the Council to that effect would be contrary to the very spirit and purpose of the Rome Statute, which is essentially the eradication of impunity for the commission of crimes falling within the jurisdiction of the Court. That would be questionable both politically and legally. Such a decision would exceed the Council's competence and would disrupt the international legal order.

At the same time, in keeping with what I have stated, we share the Secretary-General's concern about this and other measures of this kind, which might in the future affect peacekeeping operations, the concept of which is evolving towards a comprehensive vision and whose establishment is indeed within the jurisdiction of the Security Council.

There is no conflict between peace and international criminal justice; on the contrary, they are entirely complementary. Venezuela hopes that the Security Council, acting in accordance with its responsibilities under the Charter, will take a decision that respects the letter and the spirit of the Rome Statute.

The President: In view of the time, and with the concurrence of the members of the Council, I intend to suspend the meeting now.

The Security Council will continue its consideration of this item this afternoon following the adjournment of the meeting of the Security Council with the troop-contributing countries to the United Nations Mission of Observers in Prevlaka.

The meeting was suspended at 1.15 p.m.